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GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

THE INDIAN MERCHANDISE MARKS ACT, 1889,

AS MODIFIED UP TO THE 1ST JUNE, 1891.

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Act IV of 1889 has been repealed in part and amended by Act IX of 1891.

The following changes have been made in reprinting the Act:—

(1) repealed matter has been omitted, explanatory notes being inserted

(2) the amendments made by Act IX of 1891 have been inserted in their proper places, with explanatory footnotes:

(3) some further footnotes have been added for convenience of reference:

(4) a table of contents has been added.

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ACT No. IV OF 1889.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 1st March, 1889.)

An Act to amend the Law relating to Fraudulent Marks on Merchandise.

[As modified up to the 1st June, 1891.]

WHEREAS it is expedient to amend the law relating to fraudulent marks on merchandise; It is hereby enacted as follows:—

Title, extent and commencement.

1. (*1*) This Act may be called the Indian Merchandise Marks Act, 1889.

(*2*) It extends to the whole of British India; and[a]

(*3*) It shall come into force on the first day of April, 1889.

Definitions.

2. In this Act, unless there is something repugnant in the subject or context,—

(*1*) "trade mark" has the meaning assigned to that expression in section 478 of the Indian Penal Code[b] as amended by this Act:

(*2*) "trade description" means any description, statement or other indication, direct or indirect,—

(*a*) as to the number, quantity, measure, gauge or weight of any goods, or

(*b*) as to the place or country in which, or

[a] Words repealed by Act IX of 1891, s. 1, are omitted.

[b] For Act XLV of 1860 see the revised edition, as modified up to 1st August, 1890, published by the Legislative Department.

or the time at which, any goods were made or produced, or

(*c*) as to the mode of manufacturing or producing any goods, or

(*d*) as to the material of which any goods are composed, or

(*e*) as to any goods being the subject of an existing patent, privilege or copyright;

and the use of any numeral, word or mark which according to the custom of the trade is commonly taken to be an indication of any of the above matters shall be deemed to be a trade description within the meaning of this Act:

(*3*) "false trade description" means a trade description which is untrue in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition effacement or otherwise, where that alteration makes the description untrue in a material respect, and the fact that a trade description is a trade mark or part of a trade mark shall not prevent such trade description being a false trade description within the meaning this Act:

(*4*) "goods" means anything which is the subject of trade or manufacture: and

(*5*) "name" includes any abbreviation of a name.

Amendment of the Indian Penal Code.

Substitution of new sections for

3. For that part of Chapter XVIII of the Indian Penal Code [*] which relates to Trade and Property Marks, XLV of 1860.

[*] For Act XLV of 1860 see the revised edition as modified up to 1st August, 1890 published by the Legislative Department

Marks, the following shall be substituted, namely :— sections 478 to 489 of the Indian Penal Code.

"*Of Trade, Property and Other Marks.*

"478. A mark used for denoting that goods are the manufacture or merchandise of a particular person is called a trade mark, and for the purposes of this Code the expression 'trade mark' includes any trade mark which is registered in the register of trade marks kept under the Patents, Designs and Trade Marks Act, 1883, and any trade mark which, either with or without registration, is protected by law in any British possession or foreign State to which the provisions of the one hundred and third section of the Patents, Designs and Trade Marks Act, 1883, are, under Order in Council, for the time being applicable. Trade mark. 46 & 47 Vict., c. 57

"479. A mark used for denoting that moveable property belongs to a particular person is called a property mark. Property mark.

"480. Whoever marks any goods or any case, package or other receptacle containing goods, or uses any case, package or other receptacle with any mark thereon, in a manner reasonably calculated to cause it to be believed that the goods so marked, or any goods contained in any such receptacle so marked, are the manufacture or merchandise of a person whose manufacture or merchandise they are not, is said to use a false trade mark. Using a false trade mark.

"481. Whoever marks any moveable property or goods or any case, package or other receptacle containing moveable property or goods, or uses any case, package or other receptacle having any mark thereon, in a manner reasonably calculated to cause it to be believed that the property or goods so marked, or any property or goods contained in any such receptacle so marked, belong to a person to whom they do not belong, is said to use a false property mark. Using a false property mark.

"482. Whoever uses any false trade mark or any false Punishment for using a

false trade mark or property mark.

false property mark shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Counterfeiting a trade mark or property mark used by another

"483. Whoever counterfeits any trade mark or property mark used by any other person shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Counterfeiting a mark used by a public servant.

"484. Whoever counterfeits any property mark used by a public servant, or any mark used by a public servant to denote that any property has been manufactured by a particular person or at a particular time or place or that the property is of a particular quality or has passed through a particular office or that it is entitled to any exemption, or uses as genuine any such mark knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Making or possession of any instrument for counterfeiting a trade mark or property mark

"485. Whoever makes or has in his possession any die, plate or other instrument for the purpose of counterfeiting a trade mark or property mark, or has in his possession a trade mark or property mark for the purpose of denoting that any goods are the manufacture or merchandise of a person whose manufacture or merchandise they are not, or that they belong to a person to whom they do not belong, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Selling goods marked with a counterfeit trade mark or property mark

"486. Whoever sells, or exposes or has in possession for sale or any purpose of trade or manufacture, any goods or things with a counterfeit trade mark or property mark affixed to or impressed upon the same or to or upon any case, package or other receptacle in which such goods are contained, shall, unless he proves—

(*a*) that, having taken all reasonable precautions against

against committing an offence against this section, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the mark, and

(*b*) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things, or

(*c*) that otherwise he had acted innocently,

be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Making a false mark upon any receptacle containing goods.

"487. Whoever makes any false mark upon any case, package or other receptacle containing goods, in a manner reasonably calculated to cause any public servant or any other person to believe that such receptacle contains goods which it does not contain or that it does not contain goods which it does contain or that the goods contained in such receptacle are of a nature or quality different from the real nature or quality thereof shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for making use of any such false mark.

"488. Whoever makes use of any such false mark in any manner prohibited by the last foregoing section shall, unless he proves that he acted without intent to defraud, be punished as if he had committed an offence against that section.

Tampering with property mark with intent to cause injury.

"489. Whoever removes, destroys, defaces or adds to any property mark, intending or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both."

Trade Descriptions.

Provisions supplemental

4. (*1*) The provisions of this Act respecting the application

to the definition of false trade description.

application of a false trade description to goods or respecting goods to which a false trade description is applied, shall extend to the application to goods of any such numerals, words or marks, or arrangement or combination thereof, whether including a trade mark or not, as are or is reasonably calculated to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are, and to goods having such numerals, words or marks, or arrangement or combination, applied thereto.

(2) The provisions of this Act respecting the application of a false trade description to goods, or respecting goods to which a false trade description is applied, shall extend to the application to goods of any false name or initials of a person, and to goods with the false name or initials of a person applied, in like manner as if such name or initials were a trade description, and for the purpose of this enactment the expression false name or initials means as applied to any goods any name or initials—

(*a*) not being a trade mark, or part of a trade mark, and

(*b*) being identical with, or a colourable imitation of, the name or initials of a person carrying on business in connection with goods of the same description and not having authorized the use of such name or initials.

(3) A trade description which denotes or implies that there are contained in any goods to which it is applied more yards, feet or inches than there are contained therein standard yards, standard feet or standard inches is a false trade description.

Application of trade descriptions.

5. (1) A person shall be deemed to apply a trade description to goods who—

(*a*) applies it to the goods themselves, or

(*b*) applies it to any covering label, reel or other thing in or with which the goods are sold or

are

are exposed or had in possession for sale or any purpose of trade or manufacture, or

(*c*) places, encloses or annexes any goods which are sold, or are exposed or had in possession for sale or any purpose of trade or manufacture, in, with or to any covering, label, reel or other thing to which a trade description has been applied, or

(*d*) uses a trade description in any manner reasonably calculated to lead to the belief that the goods in connection with which it is used are designated or described by that trade description.

(*2*) A trade description shall be deemed to be applied whether it is woven, impressed or otherwise worked into or annexed or affixed to the goods or any covering, label, reel or other thing.

(*3*) The expression "covering" includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame or wrapper, and the expression "label" includes any band or ticket.

Penalty for applying a false trade description.

6. If a person applies a false trade description to goods, he shall, subject to the provisions of this Act, and unless he proves that he acted without intent to defraud, be punished with imprisonment for a term which may extend to three months or with fine which may extend to two hundred rupees, and in the case of a second or subsequent conviction with imprisonment which may extend to one year, or with fine, or with both.

Penalty for selling goods to which a false trade description is applied.

7. If a person sells, or exposes or has in possession for sale or any purpose of trade or manufacture, any goods or things to which a false trade description is applied, he shall, unless he proves—

(*a*) that, having taken all reasonable precautions against committing an offence against this section, he had at the time of the commission of the alleged offence no reason to suspect

pect the genuineness of the trade description, and

(*b*) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things, or

(*c*) that otherwise he had acted innocently,

be punished with imprisonment for a term which may extend to three months or with fine which may extend to two hundred rupees, and in case of a second or subsequent conviction with imprisonment which may extend to one year, or with fine, or with both.

Unintentional Contravention of the Law relating to Marks and Descriptions.

Unintentional contravention of the law relating to marks and descriptions.

8. Where a person is accused under section 482 of the Indian Penal Code[*] of using a false trade mark or property mark by reason of his having applied a mark to any goods, property or receptacle in the manner mentioned in section 480 or section 481 of that Code, as the case may be, or under section 6 of this Act of applying to goods any false trade description, or under section 485 of the Indian Penal Code[*] of making any die, plate or other instrument for the purpose of counterfeiting a trade mark or property mark, and proves— XLV of 1860.

(*a*) that in the ordinary course of his business he is employed, on behalf of other persons, to apply trade marks or property marks, or trade descriptions, or, as the case may be, to make dies, plates or other instruments for making, or being used in making, trade marks or property marks, and that in the case which is the subject of the charge he was so employed and was not interested in the

[*] For Act XLV of 1860 see the revised edition, as modified up to 1st August, 1890, published by the Legislative Department.

the goods or other thing by way of profit or commission dependent on the sale thereof, and

(*b*) that he took reasonable precautions against committing the offence charged, and

(*c*) that he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the mark or description, and

(*d*) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons on whose behalf the mark or description was applied,

he shall be acquitted.

Forfeiture of Goods.

Forfeiture of goods.

9. (*1*) When a person is convicted under section 482 of the Indian Penal Code[a] of using a false trade mark, or under section 486 of that Code of selling, or exposing or having in possession for sale or any purpose of trade or manufacture, any goods or things with a counterfeit trade mark applied thereto, or under section 487 or section 488 of that Code of making, or making use of, a false mark, or under section 6 or section 7 of this Act of applying a false trade description to goods, or of selling, or exposing or having in possession for sale or any purpose of trade or manufacture, any goods or things to which a false trade description is applied, or is acquitted on proof of the matter or matters specified in section 486 of the Indian Penal Code[a] or section 7 or section 8 of this Act, the Court convicting or acquitting him may direct the forfeiture to Her Majesty of all goods and things by means of, or in relation to, which the offence has been committed or, but for such proof as aforesaid, would have been committed.

XLV of 1860.

(*2*) When

[a] For Act XLV of 1860 see the revised edition, as modified up to 1st August, 1890, published by the Legislative Department.

(Amendment of the Sea Customs Act, 1878.—Section 10.)

(*2*) When a forfeiture is directed on a conviction and an appeal lies against the conviction, an appeal shall lie against the forfeiture also.

(*3*) When a forfeiture is directed on an acquittal and the goods or things to which the direction relates are of value exceeding fifty rupees, an appeal against the forfeiture may be preferred, within thirty days from the date of the direction, to the Court to which in appealable cases appeals lie from sentences of the Court which directed the forfeiture.

Amendment of the Sea Customs Act, 1878.

Amendment of section 18, Act VIII of 1878.

10. (*1*) For clause (*d*) of section 18 of the Sea Customs Act, 1878,[a] the following shall be substituted, namely:— VIII of 1878.

"(*d*) goods having applied thereto a counterfeit trade mark within the meaning of the Indian Penal Code,[b] or a false trade description within the meaning of the Indian Merchandise Marks Act, 1889: XLV of 1860. IV of 1889.

(*e*) goods made or produced beyond the limits of the United Kingdom and British India and having applied thereto any name or trade mark being, or purporting to be, or being a colourable imitation of, the name or trade mark of any person who is a manufacturer, dealer or trader in the United Kingdom or in British India unless—

(i) the name or trade mark is, as to every application thereof, accompanied by a definite indication of the goods having been made or produced

[a] For Act VIII of 1878 see the revised edition, as modified up to 1st June, 1891, published by the Legislative Department.

[b] For Act XLV of 1860 see the revised edition, as modified up to 1st August, 1890, published by the Legislative Department.

produced in a place beyond the limits of the United Kingdom and British India, and

(ii) [a]the country in which that place is situated is[a] in that indication indicated in letters as large and conspicuous as any letter in the name or trade mark, and in the same language and character as the name or trade mark."

(*2*) To section 18 of the Sea Customs Act, 1878,[b] as amended by sub-section (*1*), the following shall be added, namely :—

"(*f*) piece-goods, such as are ordinarily sold by length or by the piece, which—

(i) have not conspicuously stamped in English numerals on each piece the length thereof in standard yards, or in standard yards and a fraction of such a yard, according to the real length of the piece, and

(ii) have been manufactured beyond the limits of India, or,

(iii) having been manufactured within those limits have been manufactured beyond the limits of British India in premises which, if they were in British India, would be a factory as defined in the Indian Factories Act, 1881.[c]

XV of 1881.

11. The

[a-a] These words were substituted for the original words by Act IX of 1891, s. 3.

[b] For Act VIII of 1878 see the revised edition, as modified up to 1st June, 1891, published by the Legislative Department.

[c] For Act XV of 1881 see the revised edition, as modified up to 1st April, 1891, published by the Legislative Department.

(Amendment of the Sea Customs Act, 1878.—Section 11.)

Addition of a section after section 19, Act VIII of 1878.

11. The following shall be added after section 19 of the Sea Customs Act, 1878,[a] namely :— V of 1878

"19A. (*1*) Before detaining any such goods as are or may be specified in or under section 18 or section 19, as the case may be, or taking any further proceedings with a view to the confiscation thereof under this Act, the Chief Customs-officer or other officer appointed by the Local Government in this behalf may require the regulations under this section, whether as to information, security, conditions or other matters, to be complied with and may satisfy himself in accordance with those regulations that the goods are such as are prohibited to be imported.

(*2*) The Governor General in Council may make regulations, either general or special, respecting the detention and confiscation of goods the importation of which is prohibited, and the conditions, if any, to be fulfilled before such detention and confiscation, and may by such regulations determine the information, notices and security to be given, and the evidence requisite for any of the purposes of this section and the mode of verification of such evidence.

(*3*) Where there is on any goods a name which is identical with, or a colourable imitation of, the name of a place in the United Kingdom or British India, that name, unless accompanied in equally large and conspicuous letters, and in the same language and character, by the name of the country in which such place is situate, shall be treated for the purposes of sections 18 and 19 as if it were the name of a place in the United Kingdom or British India.

(*4*) Such regulations may apply to all goods the importation of which is prohibited by section 18 or under section 19, or different regulations may be made respecting different classes of such goods or of offences in relation to such goods.

(*5*) The

[a] For Act VIII of 1878 see the revised edition, as modified up to 1st June, 1891, published by the Legislative Department.

(*Stamping of Length of Piece-goods manufactured in British India.—Section 12. Supplemental Provisions.—Section 13.*)

(5) The regulations may provide for the informant reimbursing any public officer and the Secretary of State for India in Council all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention.

(6) All regulations under this section shall be published in the Gazette of India and in the Calcutta, Fort St. George, Bombay and Burma Gazettes."

Stamping of Length of Piece-goods manufactured in British India.

Stamping of length of piece-goods manufactured in British India.

12. (1) Piece-goods, such as are ordinarily sold by length or by the piece, which have been manufactured in premises which are a factory as defined in the Indian Factories Act, 1881,[*] shall not be removed from those premises without having conspicuously stamped in English numerals on each piece the length thereof in standard yards, or in standard yards and a fraction of such a yard, according to the real length of the piece.

XV of 1881.

(2) If any person removes or attempts to remove any such piece-goods from any such premises without the length of each piece being stamped in the manner mentioned in sub-section (1), every such piece, and everything used for the packing or removal thereof, shall be forfeited to Her Majesty, and such person shall be punished with fine which may extend to one thousand rupees.

Supplemental Provisions.

Evidence of origin of goods imported by sea

13. In the case of goods brought into British India by sea, evidence of the port of shipment shall, in a prosecution for an offence against this Act or section

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[*] For Act XV of 1881 see the revised edition, as modified up to the 1st April, 1891, published by the Legislative Department.

18 of the Sea Customs Act, 1878,[a] as amended by this Act, be *primâ facie* evidence of the place or country in which the goods were made or produced. VIII of 1878.

Costs of defence or prosecution

14. (*1*) On any such prosecution as is mentioned in the last foregoing section, or on any prosecution for an offence against any of the sections of the Indian Penal Code,[b] as amended by this Act, which relate to trade, property and other marks, the Court may order costs to be paid to the defendant by the prosecutor or to the prosecutor by the defendant, having regard to the information given by and the conduct of the defendant and prosecutor respectively. XLV of 1860

(*2*) Such costs shall, on application to the Court, be recoverable as if they were a fine.

Limitation of prosecution

15. No such prosecution as is mentioned in the last foregoing section shall be commenced after the expiration of three years next after the commission of the offence, or one year after the first discovery thereof by the prosecutor, whichever expiration first happens.

Authority of the Governor General in Council to issue instructions as to administration of this Act.

16. (*1*) The Governor General in Council may, by notification in the Gazette of India and in local official Gazettes, issue instructions for observance by Criminal Courts in giving effect to any of the provisions of this Act.

(*2*) Instructions under sub-section (*1*) may provide, among other matters, for the limits of variation, as regards number, quantity, measure, gauge or weight, which are to be recognized by Criminal Courts as permissible in the case of any goods.

Implied warranty on sale of marked goods.

17. On the sale or in the contract for the sale of any goods to which a trade mark or mark or trade description has been applied, the seller shall be deemed to warrant that the mark is a genuine mark and not counterfeit or falsely used, or that the trade description

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[a] For Act VIII of 1878 see the revised edition, as modified up to 1st June, 1891, published by the Legislative Department.

[b] For Act XLV of 1860 see the revised edition, as modified up to 1st August, 1890, published by the Legislative Department.

tion is not a false trade description within the meaning of this Act, unless the contrary is expressed in some writing signed by or on behalf of the seller and delivered at the time of the sale or contract to and accepted by the buyer.

Savings.

18. (*1*) Nothing in this Act shall exempt any person from any suit or other proceeding which might, but for anything in this Act, be brought against him.

(*2*) Nothing in this Act shall entitle any person to refuse to make a complete discovery or to answer any question or interrogatory in any suit or other proceeding, but such discovery or answer shall not be admissible in evidence against such person in any such prosecution as is mentioned in section 14.

(*3*) Nothing in this Act shall be construed so as to render liable to any prosecution or punishment any servant of a master resident in British India who in good faith acts in obedience to the instructions of such master, and, on demand made by or on behalf of the prosecutor, has given full information as to his master and as to the instructions which he has received from his master.

19. [*Date of commencement of this Act as regards unstamped piece-goods.*] *Repealed by Act IX of 1891.*[a]

Definition of piece goods.

[b] **19.** For the purposes of section 12 of this Act and clause (*f*) of section 18 of the Sea Customs Act, 1878,[c] as amended by this Act, the Governor General in Council may, by notification in the Gazette of India, declare what classes of goods are included in the expression 'piece-goods, such as are ordinarily sold by length or by the piece.'

VIII of 1878.

Determination of character of

[b] **20.** (*1*) The Governor General in Council may make rules, for the purposes of this Act, to provide, with

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[a] The heading to this section was also repealed by Act IX of 1891.

[b] Ss. 19 to 22 here printed were added by Act IX of 1891, s. 4.

[c] For Act VIII of 1878 see the revised edition, as modified up to 1st June, 1891, published by the Legislative Department.

goods by sampling.

with respect to any goods which purport or are alleged to be of uniform number, quantity, measure, gauge or weight, for the number of samples to be selected and tested and for the selection of the samples.

(*2*) With respect to any goods for the selection and testing of samples of which provision is not made in any rules for the time being in force under sub-section (*1*), the Court or officer of customs, as the case may be, having occasion to ascertain the number, quantity, measure, gauge or weight of the goods, shall, by order in writing, determine the number of samples to be selected and tested and the manner in which the samples are to be selected.

(*3*) The average of the results of the testing in pursuance of rules under sub-section (*1*) or of an order under sub-section (*2*) shall be *primâ facie* evidence of the number, quantity, measure, gauge or weight, as the case may be, of the goods.

(*4*) If a person having any claim to, or in relation to, any goods of which samples have been selected and tested in pursuance of rules under sub-section (*1*) or of an order under sub-section (*2*) desires that any further samples of the goods be selected and tested, they shall, on his written application and on the payment in advance by him to the Court or officer of customs, as the case may be, of such sums for defraying the cost of the further selection and testing as the Court or officer may from time to time require, be selected and tested to such extent as may be permitted by rules to be made by the Governor General in Council in this behalf or as, in the case of goods with respect to which provision is not made in such rules, the Court or officer of customs may determine in the circumstances to be reasonable, the samples being selected in manner prescribed under sub-section (*1*), or in sub-section (*2*), as the case may be.

(*5*) The average of the results of the testing referred to in sub-section (*3*) and of the further testing under sub-section (*4*) shall be conclusive proof of the

the number, quantity, measure, gauge or weight, as the case may be, of the goods.

(*6*) Rules under this section shall be made after previous publication.

Information as to commission of offences.

[*] **21.** An officer of the Government whose duty it is to take part in the enforcement of this Act shall not be compelled in any Court to say whence he got any information as to the commission of any offence against this Act.

Punishment of abetment in India of acts done out of India.

[*] **22.** If any person, being within British India, abets the commission, without British India, of any act which, if committed in British India, would under this Act, or under any section of that part of Chapter XLV of 1860. XVIII of the Indian Penal Code[b] which relates to trade, property and other marks, be an offence, he may be tried for such abetment in any place in British India in which he may be found, and be punished therefor with the punishment to which he would be liable if he had himself committed in that place the act which he abetted.

[*] See footnote [b] on p. 17, *supra*.

[b] For Act XLV of 1860 see the revised edition, as modified up to 1st August, 1890, published by the Legislative Department.

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